

Peacham's Case

1614



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“No case in our Annals seems more disgraceful than this.”
--*Bund-Willis (State Trials)*



Edmund Peacham's case has become celebrated in consequence of Sir Edward Coke's dispute with King James I and the Attorney General at the time Sir Francis Bacon, respecting extrajudicial questions to the judges; it is a case that has always been considered one of the worst acts of James's reign, and one of the great stains that rest on the memory of Bacon.

The King and his Attorney General unite to put to death by any means legal or illegal an obscure clergyman (Peacham) need strike the logical person as so peculiar, that it is tempting to believe that there must be more in the case than the public is aware of. Yet, so far as is known, from the official version of events, this is what happened.



Rev. Edmund Peacham, a Puritan preacher from Somersetshire who was frequently in trouble with the monarchy was a Somersetshire clergyman. For some reason that does not appear, a warrant in 1614 was issued to search his house revealed in his study a sermon, which according to Coke, had never been preached, and was never intended to be preached. This sermon contained some expressions, amongst others, comparing King James to Nabal, which was termed in those times as “treasonable” under the Treason Act of 1571 (and its predecessors going back to Edward III) which was specifically drawn up to deal with opponents of Queen Elizabeth. It provided, in relevant part, that any person who “shall in writing, printing, preaching, speech affirm that Queen Elizabeth is an heretic, schismatic, tyrant, infidel, then, such said offense shall be high treason.”

However, Peacham is in trouble with the law at two earlier dates: Once in 1603, without apparently any serious result, an accusation appeared against him “of uttering in a sermon seditious words against the King and more especially against his Counselors, Bishops, and Judges.”¹ This led to no serious sentence. Probably the development of James’s policy in both church and State upon his arrival in England as King had stirred in Peacham a deep resentment, and made no concealment of it in the pulpit. Peacham’s second offence comes in 1608, when James Montagu (*b.1568-d.1618*) became Peacham’s diocesan. Montagu found it necessary to advertise his resentment of Peacham’s speeches, and reprimanded him in his Consistory Court. Peacham retaliated by writing a book against Montagu and circulated the manuscript privately.

Six years later, and before the parliament of 1614 was dissolved, Peacham comes to London apparently to arrange for the presentation of a petition to officials of the Ecclesiastical Courts in the diocese of Bath and Wells. Later in the year, Peacham refuses to take the benevolence demanded by the King, saying: “St. Peter gold and silver he had none, but what he had he would give, which are my prayers for the King.” This results in Peacham’s arrest, by no other’s complaint but of Montagu’s with order from the Court of High Commission.

On January 18, 1614, a warrant by the Privy Council states Peacham stood charged with writing a treasonable book (or pamphlet): “It concerned the King to discover many things respecting that book and the author, wherein Peacham had not dealt clearly, and directs them to examine him strictly, and if they found him obstinate and perverse, to put him to the manacles as in their discretion they should see occasion.”

¹ Cal. State Papers, Dom. 1603–10, p. 26.

We are not told the title of this pamphlet, nor if it is the same one written by Peacham in 1608 against Montagu; but we are told that while Peacham's house was being searched, officers discovered some notes of a sermon in which the King and the government were denounced with "reckless vehemence." In these notes, not only were James's ministers charged with misconduct, the King with extravagance, and the Ecclesiastical Courts with a tyrannical exercise of their powers, but the King's sudden death and a rebellion of the people were declared to be the probable outcome of the government's alleged misdeeds. This was enough for the Privy Council to treat Peacham's words as "treasonable intent."

After Peacham's examinations, taken under the above-mentioned warrant, Winwood (James's Secretary) informs the Privy Council how Peacham had been examined "upon the interrogatories exhibited, where he was examined before torture, in torture, between torture, and after torture." It is peculiar how special interrogatories were drawn up for Peacham's examination, since Coke had noted that "many of the judges were of opinion, that this [Peacham's offence] was not treason."² But the King bitterly resented Peacham's remarks on himself, and urged the government to test their suspicions "to the uttermost." In order for this to happen, it was needed to obtain further information from the silent prisoner.

Although the Common law did not recognize the legality of torturing a prisoner to extort a confession, torture should apply (lawfully) by the Privy Council to a prisoner who deliberately refused to surrender information in his possession respecting a plot against the life of the sovereign or the security of the government. The same machinations apply today: Torture recommended, for reasons of national security. It was Bacon who laid this down as a legal maxim.

"In highest cases of treason, torture is used for discovery and not for evidence."
(Spedding, *Works* Vol. III. p. 114.)

Bacon meant that torture might be used to extract information respecting the conspiracy and fellow-plotters, though not to obtain evidence to be employed against the prisoner who confessed under torture. However one twists this to suit the times and plots, it remains the same: Torture was used, and is still being used, in interest of national security.

Accordingly, the King issues a warrant on January 18, 1614, to the Privy Councilors (Winwood and Cæsar), then to Bacon, Montagu, and other officers of the Tower. They are to put Peacham under torture, and "to the manacles as in your discretion you

² Cro. Car. p. 125.

shall see occasion if you find him obstinate and perverse, and not otherwise willing or ready to tell the truth.”

What is peculiar is that Peacham at the time is described as an old man, and the inhumanity of the proceedings must have been indefensible. Cruel but true.

Interrogatories upon which Peacham is to be examined
January 19, 1614³

Who procured you, moved you, or advised you to put in writing these traitorous slanders, which you have set down against his Majesty's government, or any of them?

Who gave you any advertisement, or intelligence, touching these particulars which are contained in your writings, as touching the sale of the crown lands, the deceit of the King's officers, the greatness of the King's gifts, his keeping divided Courts, and the rest; and who hath conferred with you, or discoursed with you concerning these points?

Whom have you made privy and acquainted with the said writings, or any part of them? And who hath been your helpers or confederates therein?

What use meant you to make of the said writings? Was it by preaching them in sermon, or by publishing them in treatise? If in sermon, at what time, and in what place, meant you to have preached them? If by treatise, to whom did you intend to dedicate, or exhibit, or deliver such treatise?

What was the reason, and to what end did you first set down in scattered papers, and after knit up in form of a treatise or sermon, such a mass of treasonable slanders against the King, his posterity, and the whole State?

What moved you to write, the King might be stricken with death on the sudden, or within eight days, as Ananias or Nabal? Do you know of any conspiracy or danger to his person, or have you heard of any such attempt?

You have confessed that these things were applied to the King and that after the example of preachers and chroniclers, King's infirmities are to be laid open; this sheweth plainly your use must be to publish them: Show to whom and in what manner?

³ Spedding, *Works* Vol. V. p. 338., 8vo. Edit.

What was the true time when you wrote the said writings, or any part of them? And what was the last time you looked upon them, or perused them before they were found or taken?

What moved you to make doubt whether the people will rise against the King for taxes or oppressions? Do you know, or have you heard of any likelihood or purpose of any tumults or commotions?

What moved you to write, that getting of the crown land again would cost blood, and bring men to say: 'This is the heir, let us kill him?' Do you know, or have you heard, of any conspiracy or danger to the Prince, for doubt of calling back the crown lands?

What moved you to prove that all the King's officers might be put to the sword? Do you know, or have you heard, if any petition is intended to be made against the King's Council and officers, or any rising of people against them? What moved you to say in your writing that our King, before his coming to the kingdom, promised mercy and judgment, but we find neither? What promise do you mean of, and wherein hath the King broken the same promise? ⁴

Attached to the copy of the above questionnaire, in the handwriting of Winwood, the following conclusion is noted:

Upon these interrogatories, Peacham this day was examined before torture, in torture, between torture, and after torture. Notwithstanding, nothing could be drawn from him, he still persisting in his obstinate and insensible denials, and former answers.

The next step appears to have been Bacon privately consulting with the judges (Doddridge, Crook and Houghton) about the case, and this is evident in the following extract from a letter written by him to James, dated January 21, 1614.

It grieveth me exceedingly that your Majesty should be so much troubled with this matter of Peacham, whose raging devil seemeth to be turned into a dumb devil. But although we are driven to make our way through questions, which I wish were otherwise, yet I hope well the end will be good. But then every man must put to his helping hand: For else I must say to your Majesty, in this and the like cases as

⁴ This last question could be alluding to Thomas Percy (one of the gunpowder conspirators) who had visited James shortly before Elizabeth's death with a view to getting from him a promise to help the English Catholics; a promise which James deliberately broke.

St. Paul said to the centurion when some of the mariners had an eye to the cock boat, except these stay in the ship ye cannot be safe. I find in my Lord's great and worthy care of the business, and for my part, I hold my opinion and am strengthened in it by some records that I have found.

--J.W. Bund-Willis (*State Trials* (London: 1879), Vol. I.)

Bacon, it appears, had been sounding the judges separately to see what they would do in the case, as both he and the King had doubts, under law, if Peacham was guilty of treason. Questioning the judges separately was against the law, yet commanded by James. Coke objected to it as illegal against "such particular and auricular taking of opinions;" he further asserts that unless a written attack on the King disabled the title, "no charge of treason could be based upon it." Coke does not seem to have objected to judges being consulted collectively; he only objected to individual consultation, and rightly so.

On January 27, 1614, Bacon writes to James again about the result of his consultation with other judges.

This day, in the afternoon, was read your Majesty's letters of direction touching Peacham; which because it concerneth properly the duty of my place, I thought it fit for me to give your Majesty both a speedy and a private account thereof, that your Majesty knowing things clearly how they pass may have the true fruit of your own wisdom and clear-seeing judgment in governing the business.

First for the regularity which your Majesty as a master in business of State doth prudently prescribe in examining and taking examinations, I subscribe to it; only I will say for myself, that I was not at this time the principal examiner. For the course your Majesty directeth and commandeth for the feeling of the judges of the King's Bench, their several opinions by distributing ourselves and enjoining secrecy, we did first find an encounter in the opinion of my Lord Coke, who seemed to affirm that such particular and, as he called it, auricular taking of opinions, was not according to the custom of this realm, and seemed to divine that his brethren would never do it. But when I replied that it was our duty to pursue your Majesty's directions, and it were not amiss for his Lordship to leave his brethren to their own answers, it was so concluded, and his Lordship did desire that I might confer with himself, and Mr Serjeant Montague was named to speak with Justice Crook; Mr Serjeant Crew with Justice Houghton; and Mr Solicitor with Justice Doddridge.

This done, I took my fellows aside, and advised that they should presently speak with the three judges before I could speak with my Lord Coke for doubt of infusion, and that they should not in any case make any doubt to the judges, as if they mistrusted they would not deliver any opinion apart, but speak resolutely to them and only make their coming to be to know what time they would appoint to be attended with the papers. This sorted not amiss, for Mr. Solicitor came to me this evening and related to me that he had found Judge Doddridge very ready to give opinion in secret, and fell upon the same reason which upon your Majesty's first letter I had used to my Lord Coke at the Council Table, which was that every judge was bound expressly by his oath to give your Majesty counsel when he was called, and whether he should do it jointly or severally, that rested in your Majesty's good pleasure as you would require it. And though the ordinary course was to assemble them, yet there might intervene cases wherein the other course was more convenient: The like answer made Justice Crook; Justice Houghton, who is a soft man, seemed desirous first to confer, alleging that the other three judges had all served the crown before they were judges, but that he had not been much acquainted with business of this nature.

We purpose therefore forthwith they shall be made acquainted with the papers, and if that could be done as suddenly as this was, I should make small doubt of their opinions; and, in howsoever, I hope force of law and precedent will bind them to the truth, neither am I wholly out of hope that my Lord Coke himself, when I have in some dark manner put him in doubt, that he shall be left alone will not continue singular.⁵

Coke still appears to have been obstinate, but gradually yielded on February 11, 1614, as Bacon's letter to James shows.

For Peacham the rest of my fellows are ready to make their report to your Majesty at such time and in such manner as your Majesty shall require it. Myself yesterday took my Lord Coke aside, after the rest were gone, and told him all the rest were ready, and I was now to require his Lordship's opinion according to my commission. He said I should have it, and repeated that twice or thrice, as thinking he had gone too far in that kind of negative to deliver any opinion apart before, and said he would tell it me within a very short time, though he were not

⁵ J.W. Bund-Willis, *State Trials* (London: 1879), Vol. I.

that instant ready. I have tossed the business *in omnes partes*, whereof I will give your Majesty knowledge when time serveth.

The law was then secured, but the evidence was still weak; and so Peacham appears to have been tortured again. The appearance of this is contained in a report from Bacon to the King.

Report from Bacon to the King

February 23, 1614⁶

It may please your excellent Majesty.

I perceive by the Bishop of Bath and Wells that although it seemeth he hath dealt in an effectual manner with Peacham, yet he prevaieth little hitherto, for he hath gotten to him no new names, neither doth Peacham alter in his tale touching Sir John Sydenham. Peacham standeth off in two material points *de novo*. The one he will not yet discover into whose hands he did put his papers touching the consistory villainies. They were not found with the other bundles upon the search, neither did he ever say that he had burned or defaced them. Therefore it is like they are in some person's hands, and it is like again that that person that he hath trusted with these papers he likewise trusted with these others of the treasons; I mean with the sight of them. The other that he taketh time to answer when he is asked whether he heard not from Mr. Paulet some such words as he saith he heard from Sir John Sydenham, or in some lighter manner. I hold it fit that myself and my fellows go to the Tower, and so I purpose to examine him upon these points and some others at the least, that the world may take notice that the business is followed as heretofore, and that the stay of the trial is upon farther discovery, according to that we give out. I think also it were not amiss to make a false fire, as if all things were ready for his going down to his trial, and that it were upon the very point of being carried out to see what that will work with him.

Lastly, I do think it most necessary and a point principally to be regarded, that because we live in an age wherein no Counsel is kept, and that it is true that there is some bruit abroad that the judges of the King's Bench do doubt of the case that it should not be treason, that it be given out constantly, and yet as it were a secret and so a fame to slide, that the doubt was only upon the publication, in that it was never published, for that, (if your Majesty marketh it) taketh away or least qualifies the danger of the example, for that will be no man's case. This is all I can do to thread your Majesty's business with a continual and settled care, turning and returning not

⁶ J.W. Bund-Willis, *State Trials* (London: 1879), Vol. I.

with anything in the world save only the occasions themselves, and your Majesty's good pleasure.

In pursuance of Bacon's intention, Peacham was further tortured; the result is given in the following account of the examination on March 10, 1614, taken before Bacon and three Commissioners at the Tower.

Question: Being asked when he was last at London, and where he lodged when he was there.

Answer: He saith he was last at London after the end of the last parliament, but where he lodged he knoweth not.

Question: Being asked with what gentlemen and others in London when he was there last he had conference and speech withal.

Answer: He said he had speech only with Maurice Berkeley, and that about the petitions only which had been before sent up to him by the people of the country, touching the aspirators and the grievances offered the people by the Court of the officials.

Question: Being asked touching one Peacham of his name what knowledge he had of him, and whether he was not the person that did put into his mind divers of those traitorous passages which are both in his loose and contexted papers.

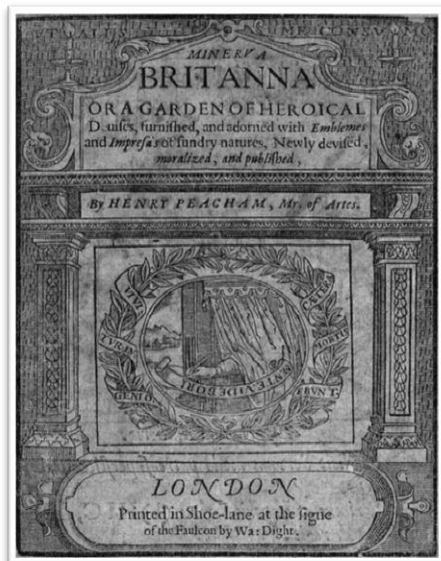
Answer: He saith this Peacham of his name was a divine, a scholar, and a traveler, and that he came to him some years past, the certainty of the time he cannot remember, and lay at this examine's house a quarter of a year, and took so much upon him as he had scarce the command of his own house or study, but that he would be writing sometimes in the church, sometimes in the steeple, sometimes in this examine's study; and now saith farther that those papers, as well loose as contexted, which he had formerly confessed to be of his own hand, might be of the writing of the said Peacham, and saith confidently that none of them are his own handwriting or inditing, but whatsoever is in his former examinations as well before his Majesty's Learned Council as before my Lord of Canterbury and other the Lords and others of his Majesty's Privy Council, was wholly out of fear and to avoid torture.

Question: Being required to describe what manner of man the said Peacham that lay at his house was.

Answer: He said that he was tall of stature and can make no other description of him, but saith as he taketh it he dwelleth sometimes at Honslow as a Minister, for he hath seen his letters of orders and license under the hand of Mr. D. Chatterton, sometime Bishop in Lincoln. He denieth to set his hand to this examination.

The judges rendered a conviction, and Peacham goes to trial. Before he did, a peculiar behaviour comes from Peacham, either by fear of his death, or to cause a delay. He declares that Sir John Sydenham, the brother-in-law to Sir Amyas Paulet (English Ambassador in France), had suggested to him the objectionable words he was accused of saying.

The Privy Council questions Sydenham and Paulet. Peacham continues to throw mysterious hints, how persons of influence assisted him. No evidence points to these hints, and it would have been singular if it did.



Peacham falls back on a denial of the authorship of the incriminating papers under his examination of March 10, 1614. He then says something more peculiar. He states his notes are “by a namesake [Peacham] from a divine, a scholar, and a traveler, who dwelt sometimes at Hounslow as a minister. The same person who had visited Hinton St. George, and had left some manuscripts in the rectory study.”

The prisoner Peacham was apparently referring to the writer and emblemist, Henry Peacham (b.1576-d.1644) who was the creator of the famous work, entitled: *Minerva Britannia*, published in 1612.

Whether Edmund Peacham was coerced to name the emblemist Henry Peacham or thought it would create some further delay toward his trial, we do not know; but it is peculiar that the emblemist of *Minerva Britannia* was mentioned, since Bacon personally knew him, as he also knew Sir John Sydenham and Sir Amyas Paulet. It is even more peculiar the prisoner Peacham chose eminent names to accuse, instead of some obscure person or persons.

The trial of Edmund Peacham finally took place at the Taunton spring Assizes in 1614; he was “indicted of treason for divers treasonable passages in a sermon which was never preached or intended to be preached, but only set down in writing and found in his study. He was tried and found guilty, but not executed: Note that many of the

judges were of opinion that it was not treason.”⁷ Peacham it is true was not executed; he died in prison seven months later.

Bund-Willis, in his *State Trials*, says: “No case in our annals seems more disgraceful than this: That the King and his Attorney-General [Bacon] should conspire to murder an unfortunate lunatic is bad enough, that they should endeavour to make the judges their accomplices is, if possible, worse; if this case stood alone it would be sufficient to disgrace both James and Bacon. Think of a King reproaching his judges (who had sworn to do justice) for not doing injustice by writing of them that they cared ‘more for the safety of such a monster (Peacham), than the preservation of the crown.’”⁸

⁷ Cro. Jac. 125.

⁸ J.W. Bund-Willis, *State Trials* (London: 1879), Vol. I.